THE HON'BLE MR JUSTICE B. PRAKASH RAO

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL NO : 1603 of 2005

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

This appeal is filed against the orders of single Judge dated 28.07.2005 passed in W.P.NO. 25157 of 1999 on the file of this Court.

The relevant facts in brief are as follows:

The respondent herein V.Kamalakar is B.Sc. graduate in B.Z.C. and he was appointed as Junior Assistant in Andhra Pradesh Warehousing Corporation (for short 'the Corporation) with effect from 16.09.1985. In the said Corporation the post of Junior Assistant (for short 'JA') and Technical Assistant Grade-III (for short 'TAG-III') are all equal cadre. The next promotion from JA and TAG-III is the Senior Assistant (for short 'SA') and Technical Assistant Grade-II (for short TAG-II). Both TAG-II and SA are equal cadre posts carrying same pay scale. The next promotion from the said category is the Technical Assistant Grade-I (for short TAG-I). For promotion to the category of TAG-I, both TAG-II and SA are made feeder posts. The respondent herein Mr.Kamalakar who joined as JA on 16.09.1985 was promoted as SA with effect from 22.11.1991. Some of the TAG-III as TAG-III which is of equal cadre of JA who were appointed subsequent to16.09.1985 were promoted as TAG-II in the first week of November, 1991, whereas the respondent herein was promoted

as SA on 22.11.1991 to the equivalent cadre post of SA. For the purpose of promotion to the next category viz. TAG-I for which both SA and TAG-II are the feeder categories, the Corporation prepared combined seniority list for the first time in the cadre of SA and TAG-II. In that combined seniority list prepared for the first time only in the cadre of SA and TAG-II, the respondent herein is shown as junior to some of the TAG-III who were appointed as TAG-III subsequent to the appointment of the respondent as JA which is of equivalent cadre as that of TAG-III. The respondent submitted representations to the Corporation that his date of entry into the service of the Corporation in the equivalent cadre has to be taken into consideration for the purpose of fixing the combined seniority list and that as his date of entry into service is 16.09.1985, the technical assistants who entered into the service of the Corporation subsequent to 16.09.1985 cannot be placed above him in the combined seniority list prepared for the first time only at the level of SA/TAG-II. His representation is rejected by way of Memo No. SWC/E2/1192/99, dated 15.11.2001.

Aggrieved of the same, the respondent herein filed W.P.No.25157 of 1999 before this court to declare the said memo as illegal and arbitrary and also to direct the respondent-Corporation to revise the combined seniority in the category of TAG-II and SA prepared in proceedings No.SWC/E2/2807/96, dated 10.07.1997 by taking combined seniority in the category of JA and TAG-III and give all consequential benefit including the promotions to the post of TAG-I.

In the affidavit field in support of the writ petition, the respondent herein pleaded that as per the Note 3 of Regulation 6 of Appendix-III of the Andhra Pradesh Warehousing Regulations,1965 (for short 'the Regulations'), in case where promotion from different posts is provided, combined seniority list of the posts from which promotion is made shall be followed i.e. the combined seniority of TAG-III and JA has to be prepared as they are different posts for which promotion is provided to TAG-II. But, the Corporation has not prepared the combined list of TAG-III and JA which were the feeder category to the next promotion post of TAG-II as required to be prepared by the

Regulations of the Corporation and in the absence of combined seniority list, the respondent promoted the personnel to the higher category of TAG-II/SA following separate seniority lists prepared for junior assistants and technical assistants. He further pleaded that when the feeder posts for TAG-II are
TAG-III and JA the Corporation as per its regulations should have prepared a combined seniority list at that initial category viz. J.A. and TAG-III at the time of promotion to TAG-II and that had the Corporation strictly followed the regulation and prepared the combined seniority list at the initial stage, he would have been eligible for promotion twice and now if the combined seniority list of TAG-II and SA is prepared, his juniors who have joined in service much later would become his seniors and that in spite of his objections for preparation of combined seniority list, for the first time only in the category of SA/TAG-II without taking into consideration the date of entry into service in the lower cadre of JA/TAG-III the Corporation simply approved the combined senior list of SA/TAG-II and it is in violation of regulations of the Corporation and it resulted in injustice to him as his juniors who joined in the Corporation much later than him became seniors to him on account of the failure in the Corporation to follow the regulations and hence there is no justification for implementing such combined seniority list.

The appellant-Corporation did not file counter in the said writ petition and the learned single Judge after hearing the counsel for the respondent-writ petitioner and also the counsel for the appellant-Corporation and after perusing the entire material made available on record allowed the writ petition and set aside the impugned order in so far as the respondent-petitioner is concerned and directed the Corporation to fix the seniority of the respondent-writ petitioner in the combined seniority list of SAs/Godown Keepers/TAG-II taking the date of his joining service as JA i.e. 16.09.1985. The learned single Judge further observed that it will not preclude the authorities from considering the cases of similarly placed persons as per Note 3 of Regulation 6 for the purpose of preparing combined seniority list. The

learned single Judge observed that a plain reading of the regulations would itself show that the writ petitioner's seniority in the common integrated seniority list of SA/TAG-II should be fixed after taking into consideration the service rendered by him in the cadre of junior assistant as according to Note 3 appended to Appendix-III of the Regulations that in case where promotion from different posts is provided, combined seniority list of the posts from which promotion is made shall be followed, and that as the combined seniority list is prepared without taking into consideration the date of entry into service of writ petitioner viz. 16.09.1985 the combined seniority list as far as it relates to the writ petitioner is not sustainable in law and is liable to be set aside.

Aggrieved by the said orders of the learned single Judge dated 28.07.2005, the Corporation preferred the present writ appeal contending that the judgment of the learned single Judge is contrary to law and facts of the case and the learned single Judge ought to have dismissed the writ petition as misconceived and contrary to the Regulations and further the learned single Judge ought to have dismissed the writ petition on the ground of delay and laches. The learned Judge ought to have appreciated that by allowing the writ petition and issuing the impugned directions in the writ petition, it would amount to unsettling the settled seniority lists and disturbing the crystalised right of several other employees. The learned single Judge ought to have dismissed the writ petition on the ground of not arraying affected persons as parties to the writ petition though the matter pertains to review of seniority, which would adversely affect their rights, which were crystalised long back. The learned Judge ought to have appreciated that the petitioner only challenged the provisional seniority list dated 10.07.1997 but did not choose to amend his prayer challenging final seniority list dated 15.10.1997 or even the latest seniority list dated 04.01.2003. The learned single Judge failed to appreciate the contention of the Corporation that Note 3 to Appendix III of Regulations does not help the writ petitioner. The learned Judge erred in allowing the writ petition by setting aside the

seniority list in so far as the writ petitioner is concerned and further directing to fix the seniority of the writ petitioner in the combined seniority list of

SA/Godown keeper/TAG-II, taking the date of his joining service as junior assistant i.e. 16.09.1985 and erred in interpreting Note 3 to Appendix III of Regulations in applying the same to the fact of the case. The learned Judge failed to appreciate that Note 3 to Appendix III of Regulations specify that while preparing the combined seniority list of various feeder cadres for the purpose of further promotion to the higher cadre, dates of promotion of such feeder categories shall be taken into account, meaning thereby that for preparation of combined seniority list of SA/GK/TAG-II which are three different feeder categories, but have to be combined for the purpose of promotion to the post of TAG-I, promotion dates of each individual in the respective categories i.e. SA/GK/TAG-II have to be taken into account, which has been actually done in this case. The learned Judge ought to have appreciated that the impugned seniority list dated 10.07.1997 prepared was in accordance with the regulations, more particularly in accordance with Note 3 to Appendix III in as much as date of promotion of each individual to different feeder category i.e. SA/GK/TAG-II was taken into account and the same cannot be found fault with. The learned Judge ought to have appreciated that the writ petitioner was promoted as Senior Assistant on 22.11.1991 and while preparing the combined seniority list of SA/GK/TAG-II that date i.e. 22.11.1991 is the crucial for fixation of combined seniority list and by no stretch of imagination the date of his joining as junior assistant, which is the feeder category to senior assistant i.e. 16.09.1985 cannot be the basis for fixation of seniority in the cadres of SA/GK/TAG-II which will be the basis for promotion to the post of TAG-I and Warehouse Manager Grade-III etc. The learned Judge ought to have appreciated that the writ petitioner though eligible to be promoted as TAG-II, did not seek consideration of his claim for promotion as TAG-II and did not object to other TAG-III promotion as TAG-II earlier to his promotion as senior assistant and has accepted his promotion as senior assistant from the category of

junior assistant on 22.11.1991 and that he was making claims at belated stage by misconstruing the regulations after six years. It is further pleaded in the grounds of appeal that the learned Judge ought to have appreciated that due to the directions in the present writ petition, all the seniority lists have to be reviewed/modified which would topsy-turvy several claims/counter claims and would lead to other legal complications and administrative difficulties.

The respondent-writ petitioner filed counter reiterating the contentions raised in the writ petition before the learned single Judge. It is further submitted in the affidavit that till 1997 separate seniority lists for feeder posts were being maintained by the Corporation for the categories of technical and non-technical and as such there was no occasion for the petitioner to raise any dispute with regard to the seniority list as his category falls in non-technical grade and as such the appellant cannot plead that he has not objected till 1996. It is further pleaded that before taking the decision of following combined seniority list for the first time, the policy was never intimated to the employees and that there was no occasion for the petitioner to raise any objection prior to 1997. In reply to the grounds of appeal that the impugned orders would effect the promotions given to all the technical assistants and other equivalent category employees the respondent/writ petitioner pleaded that if such contention is true, the Corporation ought not to have deviated from the earlier existing policy.

During the course of hearing of the appeal, the Additional Advocate General appearing on behalf of the Corporation reiterated the contentions raised in the grounds of appeal. He submitted that the writ petition ought to have been dismissed on the sole ground of delay and laches on the part of the writ petitioner as the writ petitioner kept quite when his juniors were promoted to TAG-II from the category of TAG-III in the first week of November, 1991 without promoting him as TAG-II from the cadre of junior assistant, though he

was eligible to be promoted as TAG-II. He further submitted that as the affected parties are not impleaded as respondents in his writ petition, the learned single Judge ought to have dismissed the same on that ground also. He further submitted that as per Note 3 of Regulation 6 in case where promotions from different posts is provided, combined seniority list of the posts from which promotion is made shall be followed and that in the instant case the promotion to the cadre of TAG-I feeder categories are SA/GK/TAG-II and therefore combined list in the cadre of SA/GK/TAG-II is to be prepared and it is accordingly prepared and while preparing the seniority list the date of entry into that category has been taken into consideration for fixing the seniority and that Note 3 of the Regulation 6 does not say that for the purpose of fixing combined seniority list in the cadre of SA/GK/TAG-II the date of entry in the earlier category of service is to be taken into consideration. Further, the learned single Judge grossly erred in directing the Corporation to take the date of his joining service as JA/TAG-III for the purpose of fixing combined seniority in the cadre of SA/GK/TAG-II. Hence, the impugned orders are liable to be set aside and the writ petition is to be dismissed.

On the other hand, the learned counsel for the respondent-writ petitioner submitted that the Corporation prior to1997 was following separate seniority lists for both the technical posts and general posts and promotions were also given as per their separate seniority lists and when the Corporation wanted to deviate from the said procedure and wanted to prepare combined seniority list, in respect of promotions to the different posts of the same cadre, the Corporation shall start with the preparation of combined seniority list from the lowest cadre and not at the middle cadre in order to avoid the juniors in the Corporation to become seniors to those who were appointed prior to them in the service of the Corporation in the same cadre. It is further submitted that when the Corporation wanted to prepare combined seniority list for the first time from the middle cadre, they ought to have taken the date of entry into service in equal cadre, ought to have been taken into account for the purpose of fixing the

seniority in the combined seniority list in order to avoid the juniors in the lower equivalent cadre to become seniors in the next equivalent cadre. She submitted that the learned single Judge rightly allowed the writ petition and gave direction to take the date of entry into service as Junior Assistant i.e. 16.09.1985 for fixing the combined seniority list in the cadre of SA/GK/TAG-II.

The points that arises for determination in this appeal are:

1. Whether the preparation of combined seniority list for the first time in the cadre of SA/GK/TAG-II without preparing the combined seniority list in the cadre of JA/TAG-III which are the feeder categories for promotion to the post of SA/GK/TAG-II is in accordance with Note 3 of Regulation 6 of the Corporation?

2. Whether the direction to the Corporation to take the date of entry into service of the writ petitioner for consideration for fixing his seniority in the combined seniority list of SA/GK/TAG-II is not sustainable in law?

3. Whether the writ petition ought to have been dismissed on the ground of delay and laches as contended by the appellant-Corporation?

4. Whether the writ petition ought to have been dismissed for non-impleading the persons affected in the event of revision of combined seniority list on the basis of the date of entry into service as junior assistant viz. 16.09.1985?

5. To what result?

POINTS 1 and 2:

It is not disputed that the junior assistants and technical assistant grade-III are in one cadre in the Corporation carrying same pay scale. It is also not disputed that both the said equivalent posts are feeder posts for the promotion to the cadre of technical assistant grade-II provided the junior assistants are graduates with B.Z.C. It is also not disputed that the respondent-writ petitioner is a graduate with B.Z.C. even at the time of his entry into service as Junior Assistant on 16.09.1985. It is also not disputed that the Corporation framed regulations as long back as in the year 1965 to regulate the service of the employees of the Corporation and as per Note 3 annexed to Appendix III (Vide Regulation 6) in case where promotion from different posts is provided, combined seniority list of the posts from which promotion is made shall be followed. It is also not disputed that the Corporation did not follow the said regulation while giving promotions to the cadre of TAG-II/SA and on the other hand, the Corporation was maintaining separate seniority list for the posts of TAG-III and also for junior assistants. It is also not disputed that for the first time in the year 1997 the Corporation prepared the combined seniority list in the cadre of SA/GK/TAG-II for the purpose of giving promotion to the next cadre viz. Technical Assistant Grade-I. It is also not disputed that by the year 1997, the respondent-writ petitioner was already promoted to the cadre of senior assistant on the basis of a separate seniority list prepared for the junior assistants and not on the basis of the combined seniority list in the cadre of JA/TAG-III. It is also not disputed that had the combined seniority list been prepared in the cadre of JA/TAG-III, which are feeder posts for the posts of SA/TAG-II as required under Note 3 of Regulation 6 of the Regulations, for the purpose of considering the promotion to the next cadre viz. SA/TAG-II the respondent-writ petitioner would have got promotion earlier to those who were recruited as TAG-III subsequent to his appointment. But, as the Corporation was then following the separate seniority list, for both the posts, viz. general and technical, the respondent-writ petitioner did not have grievance. But, when once the combined seniority list is prepared, it is natural for him to claim seniority as per the date of entry into service of each individual in an

equivalent cadre, which were the feeder posts for the first higher category. As the Corporation did not prepare the combined seniority list as per the regulations in the cadre of JA/TAG-III and without preparing the same, prepared common seniority list for the first time in the cadre of SA/GK/TAG-II the anomaly of juniors becoming seniors has arisen. Thus, it is only the Corporation, which is responsible for this anomaly. Hence, it is the duty of the Corporation to rectify its mistake in not following the Note 3 of Regulation 6 prior to1997 and to avoid the persons who entered into service later becoming seniors to those who entered into the service of the Corporation earlier in the same category. Therefore, while preparing the combined seniority list for the first time in the cadre of SA/TG/TAG-II, the respective dates of entry of each employee had been taken into consideration for the purpose of fixing the seniority, nobody could have any grievance. That appears to be the reason why the learned single Judge directed the Corporation to fix the seniority of the writ petitioner in the combined seniority of SA/GK/TAG-II taking his entry into service as Junior Assistant i.e. 16.09.1985 into consideration and also further observed that the authorities are not precluded from considering the cases of similarly placed persons as per Note 3 of Regulation 6. If the entry into service in the same category is not taken into consideration for fixing the combined seniority list of equivalent posts, it would cause great injustice to the employees. In order to prevent such injustice, the learned single Judge gave direction to take into consideration the date of entry into service of the Corporation while fixing the combined seniority list in the next cadre posts viz. SA/GK/TAG-II. If Note 3 of Regulation 6, had not been in force by the date of promotion of the respondent-writ petitioner as senior assistant and such regulation had come into force only subsequent to his first promotion, the contention of the learned counsel for the appellant that combined seniority list is to be prepared taking into consideration only the date of entry into that category, viz. Senior Assistant holds good. But, when such regulation was already in force and the Corporation failed to follow the said regulation to the disadvantage of the writ petitioner, it is not open for the Corporation to contend that the writ

petitioner's entry into service of the Corporation cannot be taken into consideration while fixing the seniority in the combined seniority list in the cadre of SA/GK/LAG-II. Therefore, we are unable to agree with the contention raised on behalf of the appellant. In our considered view, there is no illegality or irregularity in the orders of the learned single Judge. Thus, these points are held accordingly.

POINT No.3:

The learned counsel for the appellant contended that though the persons who joined the service of Corporation as TAG-III later than the respondent writ petitioner, were promoted to the next cadre i.e. TAG-II in 1991 prior to the promotion of respondent as senior assistant, the respondent did not challenge the same and kept quite for a period of six years and if such grievance is to be remedied at this point of time it amounts to unsettling the settled things which is not permissible as per the latest decisions of the Apex Court. He submitted that the respondent write petitioner is guilty of delay and laches and hence he is not entitled for the relief prayed for in the writ petition. We are unable to agree with this contention raised on behalf of the appellant Corporation. Because in this case it is the appellant Corporation which wanted to change settled practice of following separate seniority lists for promotion to the higher posts in the general and technical categories, for the first time in 1997 by way of preparing combined seniority list only in the middle cadre of SA/TAG-II for promotion to the higher category of TAG-I/Warehouse Managers Grade-III. As long as separate seniority lists in general and technical posts were followed for promotion to the higher category in general and technical posts separately which was in vogue in the Corporation prior to 1997, the respondent writ petitioner had no grievance, when the Corporation proposed to change that practice which was in vogue for several years for the first time in the year 1997 by way of preparing combined seniority list only in the cadre of SA/Godown Keepers/TAG-II on the basis of the date of promotion to that category,

the respondent writ petitioner immediately raised objection before the Corporation and as the Corporation rejected his objection, he approached this Court by way of writ petition. Therefore, delay and laches cannot be attributed to the respondent writ petitioner. The decisions of the Apex Court in this regard are not applicable to the facts of this case. Thus, this point is also found against the appellant.

POINT No.4:

The learned counsel for the appellant-Corporation further contended that if the seniority list is revised, several employers would be affected and those affected employees have not been impleaded in this writ petition and therefore the learned single Judge ought to have dismissed the writ petition on that count. As already observed supra, the appellant-Corporation did not file any counter-affidavit in the writ petition. The perusal of the order of the learned single Judge discloses that even during the course of hearing, the present appellant who is the respondent in the writ petition did not raise that contention before the learned single Judge. Further, the learned single Judge did not give any direction to prepare seniority list in the cadre of Junior Assistant-cum-TAG-III. The learned single Judge only directed the Corporation to take the date of entry into service as Junior Assistant of the writ petitioner into consideration while preparing the combined seniority list in the cadre of SA/GK/TAG-II. Further at the initial stage of proposal to prepare combined seniority list without taking into consideration the date of entry into service in the lower cadre, the respondent-writ petitioner approached this Court and filed the writ petition and therefore, it cannot be said that the writ petition filed without impleading the likely affected employees is not maintainable. For the said reasons, we are unable to accept the contention of the learned counsel for the appellant in this regard also. Thus, this point is also found against the appellant.

POINT NO.5:

IN THE RESULT, the Writ Appeal is dismissed.

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B.PRAKASH RAO, J

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P.LAKSHMANA REDDY, J

Dated: -02-2006.

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